IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 107 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SALIMKHAN @ SALIM MORKAS MUNIRKHAN PATHAN - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR ANIL S DAVE for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 2,
RULE SERVED BY DS for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/02/2006

ORAL JUDGMENT

1.Salimkhan @ Salim Morkas Munirkhan Pathan, petitioner has filed this petition under Article 226 and 227 of

the Constitution of India for writ of mandamus or any other appropriate writ, order or direction for quashing and setting aside the order of externment dated 28/5/2005 passed by the Deputy Police Commissioner, Ahmedabad under the provisions of Bombay Police Act as well as order dated 14/7/2005 passed by the Secretary, Home Department, Sachivalaya by which the authority has party allowed the appeal but partly confirm the order of the externment dated 28/2/2005. Petition was filed on 17/1/2006. When the matter was placed for hearing on 23/1/2006, this Court has issued Rule which was returnable on 13/2/2006. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. So, with consent of parties, matter has been taken up for final disposal.

2.Mr.Anil S.Dave, learned advocate with Ms.Bharti Rana, learned advocate appears for the petitioner. The learned counsel for the petitioner has invited my attention to the fact that in this case the Presiding Officer and Assistant Police Commissioner, Ahmedabad has issued notice on 7/7/2004 under the provisions of Bombay Police Act. The petitioner has filed interim reply on 31/7/2004 against the said show cause notice.

Thereafter some witnesses were examined and final reply was filed on 23/11/2004. The Deputy Commissioner of Police by his order dated 28/5/2005 passed an externment order.

3. Being aggrieved and dissatisfied with the same, the petitioner has filed an appeal and though same ground has been stated before the appellate authority, the appellate authority by his order dated 5/1/2006 pleased to partly confirm the order of externment reducing the externment period.

4. The learned counsel for the petitioner has stated that order of externment is liable to be quashed and set aside only on the ground that the authority has passed the order of externment after unreasonable delay. In view of the same, the learned counsel for the petitioner has relied upon the judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol in Special Criminal Case No.1451 of 2005 decided on 1/12/2005.

5. On behalf of respondent, Mr.L.R.Pujari, learned APP has tried to support the order of externment in this

behalf.

6. It is true that the authority has not explained delay in the order but they have also not filed affidavit for explaining the delay in this behalf.

7. Having heard both the learned advocate for the parties and perused the material and evidence on record, in my view, the show cause notice is issued on 7/7/2004 whereas the order of externment was passed on 28/5/2005. In the body of the order, the authority has not explained the delay. Therefore, in my view, there is unexplained and unjustified delay. Therefore, the order of externment deserves to be quashed and set aside on the ground of delay.

8. I have considered the facts and circumstances of the case. In view of the judgment of this Court in Special Criminal Application No.1451 of 2005 (supra), the contention of the learned advocate for the petitioner is required to be accepted. The authority could not pass the said order.

9.It may be noted that the Appellate Authority has also confirmed the order without considering the same. In view of the judgment in the case of Dilaji Bharthaji (supra) and taking over all view, the appellate order of externment is liable to be quashed and set aside.

10.In view of the same petition is allowed. Order of externment dated 28/5/2005 is quashed and set aside and order dated 5/1/2006, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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